BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF TRANSCANADA KEYSTONE PIPELINE, LP FOR ORDER ACCEPTING CERTIFICATION OF PERMIT ISSUED IN DOCKET HP09-001 TO CONSTRUCT THE KEYSTONE XL PIPELINE	**GARY DORR'S** **REBUTTAL TO KEYSTONE'S POST-HEARING BRIEF** **HP14-001**

Keystone has filed its Post-Hearing Brief in its entirety; however, they have included half-truths. That is to say, they have filed some things that are true, but left out some other things that are true also. This is with respect to the truths held by the Fort Laramie Treaty of 1868 which is codified in 15 Stat 635. Keystone has cited one Federal Statute or law to quote that the consultation responsibility lies with the Federal Government, and in the next sentence states that Keystone does not have a duty to consult, which is in complete violation of the Federal law-15 Stat. 635. That is a half-truth. This is also exemplary of their apparent lack of understanding of Indian Law and the duty to comply with Treaty Stipulations as the Supreme Law of the Land as the United States Constitution refers to them.

While it may be excusable to the average citizen to be ignorant of these stipulations, it is not excusable for Keystone to cite one "applicable" Federal Law in this proceeding and choose to ignore another one that they will be in violation of, that being 15 Stat. 635. Neither is it legal or proper for the SD Public Utility Commission to ignore the blatant violation of 15 Stat. 635, in that Keystone has not can not now, and will not be able to comply with Amended Permit Condition #1, despite the fact that they must comply with ALL applicable laws and regulations.

It is also entered here into the record that in compliance with 15 Stat. 635, the Tribes of South Dakota have passed resolutions in opposition to Keystone crossing their territory, a point which is stipulated by Keystone in their own Post-Hearing Brief. Keystone does not dispute that they are not "welcome" in Treaty Territory by the Tribes in South Dakota. Keystone infers that meeting many of the conditions is "prospective" and that is also true. What is also true is that they must overcome a restrictive set of resolutions by the Tribes in South Dakota. Until they comply and until they gain consent from the Tribes in accordance with (IAW) 15 Stat. 635 they can never comply with Amended Permit Condition #1. What has been set into motion by the Tribes with their resolutions prohibiting Keystone from crossing their territory is that until or "IF" they ever grant Keystone consent, Keystone cannot in its present conditions with the tribes comply with Amended Permit Condition #1. Keystone has indicated in some places that they must comply with Section 106 the National Historic Preservation Act (NHPA). If for example there was a provision in the NHPA that said Tribes could say yes or no to Keystone crossing the territory, then until Keystone gained consent, they would be in violation of the NHPA. This is true of 15 Stat. 635, which is a codified Treaty with the Great Sioux Nation in 1868. Prospectively, they would be in violation of the Treaty of 1868, or 15 Stat. 635 if now, with tribal resolutions prohibiting them, they crossed the Treaty of 1868 Territory.

Until or if they ever gain consent, it is now apparent, it is now obvious, it is now, as of the day the resolutions were passed in the South Dakota Tribal Councils, illegal for Keystone to cross the 1868 Treaty Territory. Keystone repeatedly said the Pipeline will not cross "Indian Land." That is a fact. The definition of Indian Land, however, is different from ceded territory, unceded territory and Treaty Territory. Again, to the average person, it is excusable to be ignorant of these legally recognized terms with respect to the different types and statuses of Indian lands, but it is inexcusable for attorneys of Keystone's caliber to flippantly throw them around the SD Public Utility Commissioners and pretend that they all hold the same meaning in a legal sense. They do not. Treaty Territory as stipulated in 15 Stat. 635 has special standing in that the stipulations carry with the land just as encumbrances or liens do. Until the Federal Statute is rescinded or a Treaty Right specifically abrogated, it still holds. Keystone's assertion that the Kneippe Act terminated all rights is simply overreaching and an ignorant misstatement of fact. As I previously stated in my closing brief, the Treaty Rights are still being recognized today, as seen in the case of Little Elk V. United States, whereby the Bad Man Clause of the 1868 Treaty with the Great Sioux Nation continues to be honored today by the Courts. Ownership was recognized by the United States to have changed hands in the Kneippe Act. The ability to tax land that was not still owned by Tribal members was changed in the Kneippe Act. The right to hunt, fish, and gather on those lands was never abrogated and is still practiced today by Tribal Members on lands that were taken in the Kneippe Act. The right to say who crosses the 1868 Treaty territory was never abrogated either. It is still codified under 15 Stat. 635. That is the other half of what Keystone will not admit to. Keystone has ignored that fact in their closing brief. Keystone has not been able to mount a successful defense of their actions; thus, by virtue of standing Tribal Resolutions, Keystone is legally compelled to comply under Federal Law and gain consent from the Tribes before they can cross the Treaty Territory. The prospective aspect has already been established by the Tribes. The prospective aspect is that the Tribes have legally enacted a portion of 15 Stat. 635 and refused consent to Keystone. The legal refusal of consent to cross the Treaty of 1868 Territory is in effect right now at this moment.

Keystone's argument that this could be "prospective" or in the future, is now refuted. As of right now, Keystone cannot cross the Treaty Territory. It is no longer prospective; it is now at this moment and forever after a legal obligation for Keystone to comply with the Tribal Resolutions and not cross the Treaty of 1868 Territory. This is a proven fact the same as it is for Keystone to comply with all the other Federal Statutes, laws, or regulations, which all hold the same effect for complying with Amended Permit Condition #1.

1. Keystone is correct in their Post-Hearing Brief, the SD Public Utilities Commission (PUC) did not accept the certification ipso facto, and they instead elected to gather evidence. The evidence has been in effect since 1868 with the codification of the Treaty of 1868 with the Great Sioux Nation into 15 Stat. 635. It does not matter that this has not been presented until now. It is, however, timely that Keystone must now in the present moment overcome the Tribal Council Resolutions by the Tribes in South Dakota (SD) prohibiting them from entering or crossing the Treaty Territory before they can legally cross the1868 Treaty Territory.
2. Keystone asserts on Page 2 of their Post-Hearing Brief that "the Interveners have failed to submit any evidence based on which the Commission could deny Keystone's petition," and yet Keystone themselves have admitted repeatedly that the Tribes do not consent to the proposed Keystone XL pipeline crossing the Treaty Territory. Keystone admits to a statement of fact. The fact remains that IAW 15 Stat. 635, the Tribes presently have standing legal resolutions that deny Keystone permission to cross the 1868 Treaty Territories. Keystone admits in their own Post-Hearing Brief that several witnesses testified that their Tribal Councils passed resolutions prohibiting Keystone from crossing the territory and that Keystone was "not welcome." Keystone has admitted to the evidence that Tribal members and a Tribal Council member, the Honorable Wayne Frederick have submitted. That evidence IAW 15 Stat. 635 is submitted for the record and meets the legal definition of evidence for which the Commission MUST deny the Keystone petition. To do otherwise would be tantamount to breaking the law. The law that would be broken is 15 Stat. 635. This is a law that cannot be overcome until Keystone gains the consent of the Tribes that are signatories to the Treaty of 1868.
3. The burden of proof is with Keystone and they admitted to that stipulation on page 2 of their Post-Hearing Brief under 1: "Per SDCL § 49-41B-22, Keystone was required to prove:" This is language that goes beyond the mere "certify" that Keystone would have the PUC believe is all that is required. Keystone cannot have it two ways. They cannot say in their own Post-Hearing Brief that they must "PROVE" that they will obey applicable laws and then later say that the burden of proof is on the interveners. That argument is put to rest by Keystone admitting here that they must "PROVE" they will obey applicable laws. The Interveners need only point to this self-admission on the part of Keystone to overcome the senseless argument that the burden of proof is now on the Interveners. I only bring this up because Keystone has included it in their Post-Hearing Brief. It is not a retrial on my part, but merely a rebuttal to a mis-reading of the Law on the part of Keystone. If it is indeed in the past, that is where Keystone should have left it. Since Keystone included it, it is ripe for rebuttal.
4. On page three of the same document under #2. Keystone stated "Thus under the Commissions construction of the statute, Keystone has the initial burden to show that it can continue to meet

the fifty permit conditions imposed in 2010." I find no evidence to support this statement and Keystone has not provided any evidence that the word "initial" was introduced with respect to this statement. 49-41B-27 contains no word that even resembles "initial." There is no evidence that there are two obligations of burdens presented by Keystone. This is a grievous mistake and must not be ignored. The plain and simple text of the entire proceedings does not discuss an "initial burden" and then a shifting to any other form of burden. This simply does not exist and must be noted for the record that Keystone is inserting language into the proceeding that the PUC did not say at the outset or at the conclusion. If this is not an ipso facto proceeding, then evidence must be provided. Keystone must provide evidence that they can continue to meet the conditions. The legal burden is not on an Intervener to prove that Keystone will not be breaking the law. It is the right of Interveners to provide proof, but absent Interveners, Keystone still has an obligation to prove that they will not break the law and fail to meet the conditions issued in 2010. The fact that Interveners are here does not preclude Keystone from being obligated to providing the Initial, secondary, and if need be tertiary and beyond, burdens of proof.

5. In the same Post-Hearing Brief on Page 3 under #3 Keystone stated that Corey Goulet stated that "Keystone can and will meet and comply with all applicable permit conditions…" This is also a misstatement of fact as proven by the current and still valid Tribal Resolutions that prohibit Keystone from crossing the Treaty Territory IAW 15 Stat. 635: At present, Keystone cannot "NOW" meet and comply with all applicable permit conditions. If they were now attempting to cross the 1868 Treaty Territory, they would be in violation of 15 Stat. 635, also a current and still valid Federal Law. As of right now Keystone's Corey Goulet is incorrect in stating that Keystone "can" and will meet and comply with all applicable permit conditions.
6. On Page four of Keystone's Post-Hearing Brief, Keystone states that "unless there has been some factual change that affects Keystone's ability to meet a permit condition, Keystone is logically and necessarily as able to meet the conditions today as it was in 2010." By inference then, if Keystone NEVER met a condition that they simply overlooked or did not understand before, and nothing changed it is still NOT meeting the condition they overlooked or did not understand. It becomes increasingly apparent that Keystone may not have a legal understanding of Treaty Law with respect to Tribes' reserved rights. Keystone shows a lack of understanding of these concepts when they tried during this process under HP14-001 to exclude evidence or testimony of Aboriginal Title. That is a concept that is far beyond the reaches of this hearing, and one that was never approached by Interveners. It is also proof that Keystone does not understand the obligations they have to comply with the 1868 Treaty with the Great Sioux Nation which was codified under 15 Stat. 635. The obligation was there in HP09-001 and it is still here in HP14-001. Keystone's obligation has never changed. It is now being stated in plain and simple terms in accordance with the Canons of Treaty Construction, as the Tribes would have understood them at the time of the Treaty Signing. It is a Supreme Law of the Land that Keystone must have complied with in both of the HP09-001 and HP14-001 proceedings. That they have not complied and gained consent of the Tribes to cross the 1868 Treaty Territory is not a factual change. That fact has never changed. What has changed is that it would have been wrong before in HP09-001 and it is still wrong now under HP14-001 for Keystone to cross

1868 Treaty Territory without Tribal Consent. Therefore Keystone could not BEFORE, cannot NOW, and cannot in the FUTURE comply with permit condition #1.

7. On Page 4 of Keystone's Post-Hearing Brief, Keystone states: "Keystone submitted its certification, accompanied by the appendices, under the oath of its president, Corey Goulet. By doing so, Keystone met its burden of proof under SDCL 49-41B-22, subject to some other party proving otherwise." This is a complete misreading and mis-quoting of SDCL. Under SDCL 49-41B-22 the subtitle is "Applicants Burden of Proof." It goes on to explain the stipulations of the Applicant's burden of proof. NOWHERE does it shift any burden to Interveners. NOWHERE in 49-41B-22 does it even have the word "Intervener." There is no legal responsibility of an Intervener to PROVE that the Applicant, Keystone, is meeting the stipulations of 49-41B-22, the Applicant's Burden of Proof. The Applicant, by virtue of the wording of 49-41B-22 has the only burden of proof named by the SDCL. In this case and this paragraph, rather Keystone has met the burden of complying with 49-41B-27, whereby they must "certify to the Public Utilities Commission that such facility continues to meet the conditions upon which the permit was issued. Keystone did submit a "certification," however they still bear the burden of proof. Nowhere in these two citations does anything imply that the burden of proof has changed to the Intervener. Rather in 49-41B-27 it DOES state "Construction, expansion, and improvement of facilities. Utilities which have acquired a permit in accordance with the provisions of this chapter may proceed to improve, expand, or construct the facility for the intended purposes at any time, subject to the provisions of this chapter…" The words SUBJECT TO THE PROVISIONS OF THIS CHAPTER therefore purport to regulate that Keystone must comply with 49-41B. 49-41B-22 is within 49-41B. Therefore it is imperative that the Commission recognize that the burden of proof remains with the Applicant. It is therefore Keystone's burden to prove that they can continue to meet all the conditions. They must have provided proof to every single condition, absent any obligation of anybody else, because the statute does not provide evidence that any other person, entity, or anyone other than the applicant has the burden of proof. Keystone has not met its burden of proof in that they did not provide proof of every complying with every single amended permit condition. It remains that they did not comply with amended permit condition #1, by not gaining consent to cross treaty territory under the Federal Statute 15 Stat. 635. This statement by Keystone must be addressed by this commission and recognized as a misstatement of SDCL 49-41B-27. Keystone has complied with 49-41B-27 and then implied that because they complied with it, they also complied with 49-41B-22, which contains only evidence that the Applicant has the burden of proof to show that they can continue to meet the conditions. 49-41B-27 also refers by way of chapter to 49-41B-22 and in no way makes any mention or stipulation of Interveners or Interveners having a burden of proof that the Applicant can continue to meet the conditions.
8. In the Keystone Post-Hearing Brief Page 4, #4, Keystone states that "SDCL §49-13-16 presumes that the Amended Final Decision and Order is final and valid. It can only be challenged if a party claiming the order to be invalid "plead[s] and prove[s] the facts establishing the invalidity." Dorr, Intervener pro se, identified facts that established that Keystone cannot now or in the foreseeable future comply with amended permit condition #1 because unless Keystone gains tribes' consent to cross the Treaty Territory, they will be in violation of 15 Stat. 635. Keystone

the applicant now has the burden of proof under 49-41B-22 to prove that they have overcome the prohibitive tribal resolutions and have consent now. This is a fact that was valid in the Amended Final Decision and Order, and it is still valid now. What has not been provided by the Applicant is that they have consent from the Tribes to cross Treaty Territory IAW 15 Stat.635. It is now invalid. It appears that the PUC and the applicant have overlooked a little understood law and it is now being brought to light that 15 Stat. 635 was overlooked before, is still a valid, applicable Federal Law that Keystone must comply with IAW amended permit condition #1, and has not been remedied. It therefore makes the Amended Final Decision and Order invalid, perhaps not by intention but certainly by force of law. Keystone admits with evidence it submitted Exhibit A, page 2, #57 that it consulted with the Rosebud Sioux Tribe, and in the Procedural History Page 15 #66-69, Keystone itself provides proof that Keystone did not consult with the Standing Rock Sioux Tribe (Honorable Phyllis Young testimony, #65), and Keystone did not consult with the Rosebud Sioux Tribe (Honorable Wayne Frederick, #65) which is not IAW 15 Stat. 635. Therefore Keystone cannot meet amended permit condition #1 as proven by Keystone's own evidence that they submitted and did not refute, in that they did not consult with the Standing Rock Sioux Tribe or the Rosebud Sioux Tribe.

9. In #65 of the same page, Keystone went on to say "This testimony does not establish that Keystone cannot meet any permit conditions because, as stated in the conclusions of law, it is not Keystone's legal obligation to consult with the Tribes in connection with the FSEIS. This is a true statement in that Keystone <u>limited it to the obligation to consult IN CONNECTION with the FESIS</u>. It is also true that under 15 Stat. 635, it is also a separate and legally binding obligation

of anyone who wants to cross the 1868 Treaty Territory to gain consent of the Tribes of the 1868 Treaty. Thus it is understood BY LAW:

1. That in connection with the FSEIS it is the Federal Government's obligation to consult with the Tribes.
2. That in connection with 15 Stat 635 it is the obligation of anyone who wants to cross Treaty Territory to gain the consent of the Tribes who are signatories of the 1868 Treaty.

This testimony referred to by Keystone does not have anything to do with the Federal Government's responsibility to consult. The Interveners never brought that argument into this hearing. The Interveners and multiple witnesses DID provide evidence that Keystone did not consult with Tribes IAW 15 Stat. 635 and therefore DOES provide evidence that Keystone cannot meet a permit condition. Keystone cannot meet amended permit condition #1. It becomes apparent with more understanding how the PUC must deny this certification with enlightenment that Keystone is misguided into thinking that the Interveners tried to use the Federal Obligation to argue a completely different obligation put on individuals who want to cross the 1868 Treaty Territories. These are two completely different arguments and the Interveners only argued that IAW 15 Stat. 635, Keystone failed to comply and therefore must be denied certification.

10. Keystone rather poorly argued on Page 15 of their Procedural History in #66 that "No permit condition requires that Keystone consult with the Tribes about the Project. This is a direct opposition to the provisions of the Treaty of 1868 as stipulated in 15 Stat. 635. It has been argued at length in this rebuttal that 15 Stat. 635 is a valid Federal law that is applicable therefore as a result of being valid. This #66 is completely out of bounds and should be considered to be completely inaccurate with respect to the Congress' codification of 15 Stat. 635 and the United States Constitution whereby Treaties are the Supreme Law of the Land.
11. #67 of the same page is completely irrelevant to the proceedings under HP14-001. The statement, "The King of England could have been a party to Docket HP09-001" holds about as much weight the completely irrelevant statement by Keystone. Is there some penalty to be assessed to the Tribes for not being parties to Docket HP09-001? If there is then maybe Keystone should lay out the penalties for Interveners who don't participate in other dockets according to the law. It is also rather a thinly-veiled racist statement that Keystone refers to Interveners as "Tribes" and must be recognized for the obvious attempt at belittling Tribes. There are Interveners and Applicants, Keystone must bear responsibility for holding to those definitions, otherwise they should refer to every Intervener as Attorney-Interveners, Lay Interveners, or else this PUC is party to an obvious slant directed toward the Tribes.
12. In #69 of the same page Keystone argued that "Multiple witnesses testified that Tribes in South Dakota passed resolutions opposing the project and that Keystone representatives were not welcome on Tribal Land." It seems rather peculiar that Keystone would provide an argument that does not dispute that IAW 15 Stat. 635, Keystone has NOT GAINED CONSENT from the Tribes to cross the 1868 Treaty Territory. However, despite the peculiarity, let this Keystone

argument stand as proof that Keystone has not met its individual obligation to gain consent from the Tribes IAW 15 Stat. 635 to cross the 1868 Treaty Territory.

13. On page 5, #5 of Keystone's Post-Hearing Brief, Keystone states "Most of the conditions are prospective." As it has been argued and proven in this document, Keystone can NOT at this moment cross 1868 Treaty Territory by virtue of the fact that Tribal Resolutions, which Keystone does not refute, prohibit Keystone from crossing the 1868 Treaty Territory. Therefore the prospective aspect to crossing the territory is a burden now in effect and therefore Keystone cannot comply with Amended Permit Condition #1.
14. In the same above named paragraph, Keystone unsuccessfully argues "Keystone could not logically have presented evidence of compliance with these conditions because of their prospective nature." Instead Keystone admits, by way of stipulating that trial resolutions are in effect that prohibit them from crossing 1868 Treaty Territory IAW 15 Stat. 635, that they must overcome at the present moment those same tribal resolutions. Therefore amended permit condition #1, at least as far as Tribes are concerned changes from prospective to current in nature and Keystone must overcome that prohibition now. Amended Permit Condition #1 is partly a current condition in that there is now a binding resolution prohibiting Keystone from crossing 1868 Treaty Territory. That is not prospective in nature. The answer is now before the PUC, Keystone does not have consent from tribes as required under 15 Stat.635. Therefore it again becomes obvious that failing to comply with Amended Permit Condition #1, Keystone's certification must be denied.
15. On page 6 of Keystone's Post-Hearing Brief #5, b. Keystone states "The testimony failed to establish that Keystone cannot comply with any permit conditions." This is simply not true. The Interveners' witnesses provided evidence that Keystone cannot comply with 15 Stat. 635 which is an applicable federal law. Therefore this paragraph by Keystone holds no factual weight and the certification must be denied for failing to comply with Amended Permit Condition #1.
16. On page 8 of Keystone's Post-Hearing Brief, Keystone states, "The Commission previously found that the risk of a leak affecting public or private water wells is low and that the risk of a release that would irremediably impair a water supply is very low." Keystone readily told landowners and told John Harter in the presence of Intervener Dorr, that the route could change and move. The route did move on Harter's land further away from Colome City Water. Although it moved further away, the effect was nullified by the fact that it also moved higher at least 60 feet upslope of the Colome City Well. It may be upgradient; however the entire route cannot be simply rated as upgradient due to the undulating nature of the land. It may be upgradient but it is now also uphill at least 60 feet and as high as 100 feet higher, UPSLOPE, of the Colome City water supply. This moving the route UPHILL now poses a "threat" to the social and economic conditions of inhabitants or expected inhabitants (SDCL 49-41B-22). Therefore this certification must be denied due to the fact that by attempting to move further from a known city water supply, Keystone instead moved upslope or uphill from that very city water supply, and now places a threat to that water supply for Colome, SD.
17. On page 10 of Keystone's Post-Hearing Brief, Keystone stated "The Commission previously found that Keystone has committed to mitigate water crossing impacts through implementation of procedures outlined in the CMR Plan." The CMR Plan still contains clauses that the Tribes of

the OSRWSS MUST give consent to Keystone to shut off water supply. ("TransCanada shall make provisions acceptable to Reclamation and OSRWSS for any activity conducted by TransCanada that causes water service in the OSRWSS Core System pipeline to be interrupted.") Construction of the proposed Keystone XL pipeline will require that the water be shut off. Further, Keystone's own documents outline that the Tribes of the OSRWSS require that a pass-around water apparatus be constructed where the KXL would cross the OSRWSS. Keystone denied the request "respectfully." The CMR plan is not finalized, however what is evident is that Keystone has not gained consent of the Tribes to cross the OSRWSS or to shut off the water supply system. Additionally, Keystone did not provide evidence that they have permission to cross the OSRWSS. They stated they "spoke" with BOR but did not provide any proof that BOR or any of the Tribes, or the OSRWSS gave consent to cross the OSRWSS which is held in trust for the Tribes by the United States. The System is held in trust, not just the actual land right to cross property owners land. For the moment, Keystone does not have consent and there does not appear to be anything that would suggest that Keystone will gain consent to cross the OSRWSS right of way. For this reason, Keystone's certification must be denied.

18. On page 12 of Keystone's Post Hearing Brief, Keystone stated "First with respect to the FSEIS and consultation by the Department of State, as Keystone established and the Commission acknowledged in pre-hearing motions in limine, it is the responsibility of the lead federal agency, the Department of State, not Keystone, to consult with the tribes under Section 106 of the National Historic Preservation Act." Interveners never argued that fact. What Interveners did point out was that IAW 15 Stat. 635, another Federal Law, Keystone DOES have a responsibility to gain consent from tribes to cross 1868 Treaty Territory. Keystone presents statements that seem to show some confusion as to the facts stated by Interveners which may come from a misunderstanding. There is a Federal duty to consult. That is a separate issue than the Keystone obligation to gain consent under 15 Stat. 635. 15 Stat. 635 is much more specific in nature in that it does not require "consultation" rather it requires tribal consent. The PUC should not be confused by the statements of Federal Law provided by Interveners that do point out Keystone has a duty to gain consent IAW 15 Stat. 635, and does nothing to prove Federal "consultation" obligations.
19. On Page 13 of Keystone's Post-Hearing Brief, Keystone stated "The Rosebud Sioux Tribe called the Honorable Wayne Frederick." This is not factual. Intervener Dorr called the Honorable Wayne Frederick. The Honorable Wayne Frederick also provided direct testimony that Keystone had not consulted with the Rosebud Sioux Tribe. Keystone did provide documentation that they met with "members of the Rosebud Sioux Tribe" but IAW with Tribal law, the entire Tribal Council or a quorum assembled, must be present to be considered consultation.

Conclusion

It is for all these reasons stated here that Keystone has been shown to be deficient in meeting the requirements of 15 Stat. 635 and gain consent of the Tribes to cross 1868 Treaty Territory. Witnesses have provided testimony that Keystone has an immediate condition, a standing tribal council resolution opposing Keystone crossing 1868 Treaty Territory that verifies that Keystone

cannot now meet Amended Permit Condition #1. Keystone admits that it must comply with Federal laws; however, demonstrates ignorance of 15 Stat. 635 and the Treaty of 1868 with the Great Sioux Nation contained therein, and that they must gain consent from the Great Sioux Nation Tribes to cross 1868 Treaty Territory. Keystone would readily admit that they must comply with the National Environmental Policy Act, the Clean Water Act, and other Federal laws, but ignores that they must comply individually with 15 Stat. 635. Keystone's individual compliance with 15 Stat. 635 is a separate issue from the Federal Government's duty to consult under Section 106 of the NHPA and should not be confused one from the other.

It has been shown that Keystone thus cannot comply with Amended Permit Condition #1 right now at this very moment, not "prospectively." Keystone has proven that in regards to consultation the Federal Government has been lacking; however, that is a battle to take up at another venue. For this venue the Interveners have shown that Keystone is unable to be in compliance in the present moment with Amended Permit Condition #1. Keystone spoke the truth in some of their sentences, but they failed to speak the complete truth. That truth is that they do have a responsibility at this very moment to gain Tribal consent to cross 1868 Treaty Territory, and that there are already prohibitive tribal resolutions in place that necessitate Keystone working with the Tribes to gain that consent. Keystone's certification must be denied based on the demonstrated evidence that they cannot comply thusly with Amended Permit Condition #1.

Dated this 30th Day of October, 2015.

Gary F. Dorr
Individual Intervener 27853 292d St. Winner, SD 57580

Certificate of Service
Gary F. Dorr hereby certifies that, on this 30th day of October 2015, a true and correct copy of Gary Dorr's Rebuttal to Keystone's Post Hearing Brief was filed on the Public Utilities Commission of SD e-filing website and also via email and mail to the following:

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Dated this 30th day of October, 2015
/S/
Gary F. Dorr